SECTION 10.0 – RESPONSE TO COMMENTS

10.0 RESPONSE TO COMMENTS

This section of the FEIR provides individual responses to the public and agency comments received on the Draft Environmental Impact Report (DEIR) for the New Bedford/Fairhaven Harbor DMMP.

Two letters of response to the DEIR were received by MEPA. Agency letters are addressed in the order in which they are listed in the MEPA DEIR Certificate of June 14, 2002. The first response letter received by MEPA was from Massachusetts Department of Environmental Protection. The second response letter received by MEPA was from Massachusetts Department of Marine Fisheries.

Copies of the MEPA DEIR Certificate and these two agency letters are presented in this section of the FEIR with annotated comments. Responses to the annotated comments follow each letter in the annotated order. Where appropriate, the response may direct readers to the specific sections of the FEIR where the comments are implicitly answered.

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June 14, 2002

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME	: Dredged Material Management Plan
PROJECT MUNICIPALITY	: New Bedford and Fairhaven
PROJECT WATERSHED	: Buzzards Bay
EOEA NUMBER	: 11669
PROJECT PROPONENT	: Massachusetts Coastal Zone Management
DATE NOTICED IN MONITOR	: May 8, 2002

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report submitted on the above project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00).

This project is part of a state-wide Dredged Material Management Plan (DMMP) to address the issue of finding environmentally sound disposal sites for dredged material from the Commonwealth's eight Designated Port Areas (DPA) that is unsuitable for unconfined ocean disposal. This Draft EIR is being filed specifically for the DPA of New Bedford/Fairhaven Harbor. The DEIR deals with the disposal of dredged material and not with dredging itself. Individual dredging projects within the harbor must undergo their own environmental review.

Studies reported in the baseline demand analysis have estimated that up to 960,000 cubic yards (cy) of contaminated and otherwise unsuitable material from both public and private dredging projects will require management and disposal over the next 10 years to maintain the DPA as a viable working port.

The DEIR has provided a detailed and thorough analysis of a large variety of alternative disposal and de-watering sites and has presented a preferred alternative. The preferred alternative involves construction of two Confined Aquatic Disposal (CAD) sites within New Bedford/Fairhaven Harbor, one just north of Popes Island and the other in the Inner Channel. These CADs have the capacity to accommodate the estimated volume of dredged material and are in close proximity to the dredging areas. Based on the level of detail of information provided in the DEIR, the selection of this method of disposal and these CAD sites is reasonable on both environmental and economic grounds.

A. As the DEIR indicates, before a final decision is made on a management plan, there will need to be some additional site specific information provided in the Final EIR. That site specific information is identified in the DEIR and includes:

1. • Additional geotechnical borings
2. • Macrobenthic sampling and identification
3. • Current measurements and water column chemistry
4. • Dredging and disposal event modeling and hydrodynamic analyses
5. • Underwater archaeological surveys
6. • Physical and chemical analyses of surgical sediments

7. I expect that this information will be provided in the FEIR. Should this site-specific information indicate that the preferred alternative, in whole or part, is not suitable, the FEIR should provide the same level of information on any alternative site or methodology that might be chosen.

The DEIR has provided sufficient information to allow the dismissal of upland disposal and upland reuse of the dredged materials, and those options need not be carried forward in the FEIR. Nevertheless, while the DEIR has also shown that Alternative Technologies are not practicable or cost-effective at

this time, these technologies are being continuously advanced. Therefore, I expect that their use will be re-evaluated periodically by the proponent and the permitting agencies to determine whether all or some of the dredged material can be managed in the future using an improved Alternative Technology.

B. The DEIR has presented a Monitoring and Management Plan that uses a tiered monitoring strategy. Under this strategy, if lower level monitoring uncovers adverse effects, a higher level of monitoring would be implemented and, if necessary, management actions such as restricting or curtailing disposal operations might be implemented. The DEIR also identifies a number of Best Management Practices for the CADs that have been used in other disposal operations with considerable success.

The DEIR also indicates that the proponent intends to establish a Technical Advisory Committee that will include representatives of local, state and federal agencies. This group will establish what specific actions will be taken in response to monitored problems, and will determine who is responsible for
C. taking any necessary actions. This group should also consult with the Division of Marine Fisheries (DMF) to develop a schedule for CAD use, and to develop appropriate plans for shellfish propogation and other mitigation measures, as indicated in the DMF comment.

I am pleased with the progress made to date on this important project and I look forward to reviewing the more detailed information in the FEIR.

June 14, 2002
Date

Bob Durand

Comments received :

Department of Environmental Protection
Division of Marine Fisheries

BD/rf

10.1 Certificate of the Secretary of Environmental Affairs on the DEIR

Comment: A. *Need for additional site-specific information provided in the FEIR*

Response: Additional site-specific information is presented in section 3.0 for the preferred alternatives and 5.0 for the selected preferred alternative.

Comment: A 1. – *(need for) Additional geotechnical borings*

Response: A discussion of the additional information gained from the Phase II geotechnical borings program performed for the FEIR is presented in Section 3.1.

Comment: A 2. *– (need for) Macrobenthic sampling and identification*

Response: A discussion of the additional information gained from the macrobenthic sampling and identification program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.6.

Comment: A 3. *– (need for) Current measurements and water column chemistry*

Response: A discussion of the additional information gained from the current measurements program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.9. A discussion of the additional information gained from the water column chemistry program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.8.

Comment: A 4.- *(need for)Dredging and disposal event modeling and hydrodynamic analyses*

Response: A discussion of the additional information gained from the dredging and disposal event modeling program performed for the selected preferred alternative PIN CAD site area is presented in Section 5.0. A discussion of the additional information gained from the hydrodynamic analyses program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.8.

Comment: A 5.- *(need for) Underwater archaeological surveys*

Response: A discussion of the additional information gained from the underwater archaeological surveys program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.4.

Comment: A 6.-*(need for) Physical and chemical analyses of surficial sediments*

Response: A discussion of the additional information gained from the physical and chemical analyses of surficial sediments program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.5.

Comment: A 7.*-If the preferred alternative, in whole or in part, is not suitable, the FEIR should provide the same level of information on any alternative site…*

Response: The selection of the preferred alternative CAD cell site, Section 4.0, presents the objective analysis of both proposed preferred alternatives, CI and PIN, brought forward from the DEIR. The selected preferred alternative is PIN and it is considered suitable. The PIN site is recommended for designation.

Comment: B.*- The DEIR presented a Monitoring and Management Plan…*

Response: The FEIR includes a dredging management plan that is presented in Section 8.0. This section describes and provides the framework for the management tools that must be developed to support use of the designated CAD area by individual projects.

Comment: C.*- This group (Technical Advisory Committee) should also consult with the Division of Marine Fisheries(DMF) to Develop a schedule for CAD use and to develop appropriate plans for shellfish propagation and other mitigation measures…*

Response: The formation and importance of a Technical Advisory Committee (TEC) is discussed in Section 9.0 Dredging management Plan. In Section 7.0 Mitigation Measures the TEC will find helpful information regarding avoidance, minimization and mitigation measures. Biological time-of -year dredging windows recommendations are presented to assist regulatory agencies in the determination of dredging project time frames with the least environmental impact. The DMF has been consulted by CZM in the preparation of the shellfish mitigation recommended for development of the preferred alternative.

COMMONWEALTH OF MASSACHUSETTS
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JANE M. SWIFT
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BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

June 7, 2002

Jay Wickersham, Director
MEPA Unit
Executive Office of Environmental Affairs
251 Causeway Street – 9th Floor
Boston, MA 02114-2150

Re: EOEA # 11669
DEIR, Dredged Material Management Plan
New Bedford and Fairhaven Harbor

Attention: Richard Foster

Dear Mr. Wickersham:

The Department of Environmental Protection (DEP) has reviewed the Draft Environmental Impact Report (DEIR) for the Dredged Material Management Plan (DMMP) for New Bedford and Fairhaven Harbor (EOEA # 11669) and this correspondence includes DEP's consolidated comments.

Introductory and Background Comments

Initially, DEP would like to indicate its full support for development of a Dredged Material Management Plan to identify and permit dredged material management alternatives with sufficient capacity to safely and cost-effectively manage the 960,000 cubic yards of sediment that are deemed unsuitable for unconfined ocean disposal (UDM) from both public and private dredging projects over the next 10 years from the Harbor serving both New Bedford and Fairhaven . As you are aware, DEP has been working closely with the Office of Coastal Zone Management (CZM) and other stakeholders the past few years to move forward with DMMPs for the Commonwealth's Designated Port Areas, New Bedford/Fairhaven being just one of them.

Disposal site identification and designation is being integrated with, and relies on, the New Bedford/Fairhaven Harbor Plan and as part of the plan, the communities will identify specific landside development activities that will require dredging. The DMMP is working simultaneously to identify reuse and disposal sites for the dredged sediments so that potential sites can be reviewed by the community in the context of the Harbor Plan. By supporting the two programs in tandem, it will be able to efficiently provide the technical information for the ports to develop community consensus on the most appropriate development and dredging disposal site scenario.

General Comments

(1) The DMMP has fully assessed the entire spectrum of alternatives, including; upland reuse/disposal, alternative treatment technologies, and aquatic disposal and performed analyses of the resources present at the potential sites to assess the potential impacts associated with the use of each site.

(2) DEP is of the opinion that CZM has performed an excellent and thorough assessment of options and sites and that the proposal to carry two Inner-Harbor CAD sites (Popes Island North and Channel Inner) into the Final EIR to allow for public/agency review and comment on both sites is reasonable and logical and is supported by the current level of documentation.

A. (3) As clearly articulated in the DEIR, additional site-specific information will need to be obtained before final site selection and permitting determinations can be made. This information will be critical to allow for final decision-making on whether either CAD is permittable and if both are, which one is preferable. According to the DEIR, this information will include at least the following:

1. • Additional geotechnical borings to confirm depth to bedrock and determine side slope stability
2. • Macrobenthic sampling and identification
3. • Current-meter measurements and basic water column chemistry
4. • Dredging and disposal event modeling and hydrodynamic analysis
5. • Underwater archaeological surveys
6. • Physical and chemical analysis of surficial sediment
7. In addition, the Final EIR will need to include more detailed discussion of Long-Term Management Strategies.

A review of DEIR Table 1-2 (page 1-26), titled; "Summary of Attributes of Proposed Preferred Alternative Sites" indicates that each of the CAD sites has its own particular pluses and minuses. As previously indicated, additional information is necessary to allow for final decision-making, but at first blush, it appears that Popes Island North has a number of environmental attributes (e.g., Benthos-Habitat Complexity, Shellfish & Fisheries) that would point to this site as the "better location" for a CAD.

Technology Assessment

(1) DEP agrees with the DEIR determination that upland reuse/disposal of UDM is neither feasible nor cost-effective and we concur with the DEIR recommendation that this option no longer needs to be considered.

(2) DEP also agrees with the DEIR conclusion that at this time Alternative Technologies to manage the volume and nature of the UDM are currently not realistic nor cost-effective, but that this category of technologies should be carried forward as potential future options and periodically reassessed to determine whether new information has been developed that might result in the use of an alternative technology for all, or portions of, UDM during one or more of the 5-year disposal phases.

Monitoring and Management Plans

(1) A tiered approach to monitoring dredged material disposal impacts has been proposed, and is summarized in the DEIR, using a series of "decision tree" flow charts. The decision trees are structured such that indications of adverse effects at lower levels will trigger management actions involving more thorough examination of the impacts. If Tier I monitoring (Tier I would represent the minimum or "routine" level of monitoring) indicates potential impacts, the proponent would implement the next higher monitoring tier. If the monitoring at this level indicates an absence of adverse environmental impacts, then there typically would be no need to implement additional monitoring and/or take management action (such as reduce/restrict disposal operations).

(2) MCZM has developed draft Best Management Practices (BMPs) for the CADs based in part on the experiences and data from the Boston Harbor Navigation Improvement and Dredging Project (BHNIP). The DEIR states that BMPs have been developed to meet state and federal water quality criteria and standards. As occurred during the BHNIP, DEP staff will work closely with CZM and other stakeholders to review and refine the BMPs.

(3) DEP concurs with the DEIR proposal that a disposal site management and monitoring plan be developed by a Technical Advisory Committee (TAC) composed of local, state, and federal interests (as was done during the BHNIP), the purpose being to determine the specific actions and responsibilities necessary to ensure that disposal site use protects human and environmental health and resources. It will address where, when, and how a disposal site can be used, what kind of short and long-term monitoring will be required, and who should be responsible for every aspect of site use, management, and monitoring. The management plan will also determine what kind of material can be safely disposed of, and what testing may be necessary to determine the nature of the material proposed for disposal. As with the BMP Plan, DEP staff will actively participate in the development and implementation of this plan.

B. **Compliance With Water Quality Standards**

1. (1) The DEIR states that additional detailed site-specific information is required to fully assess the fate of UDM placed at the proposed locations, in that at present, understanding of the magnitude and seasonal/spatial components of these physical forces is insufficient to quantify the long-term

stability of UDM at the preferred disposal sites. Detailed, *in-situ* measurements of tides, circulation, and patterns of sediment resuspension will be evaluated at the preferred disposal site. DEP concurs with this proposal.

2. (2) From prior projects, evidence suggests the impact to water quality from UDM disposal is short-term and typically includes a localized decrease in DO, pH, light penetration, and increase in TSS with a related slight increase in certain contaminant concentrations. Conditions historically have returned to ambient conditions within hours to days, depending on the amount and composition of the disposed material.

3. (3) DEP staff have reviewed Section 9.1.3, Water Quality Standards of the DEIR and have the following comments:

   a) The authors state, "The development of water quality standards prior to dredging and disposal activities will provide target baseline conditions, which are not to be exceeded during operations." DEP wishes to clarify this statement in that we do not anticipate that project or site-specific "standards" will be developed, but that "thresholds" would be developed which could be used as either/both not-to-exceed criteria or caution/warning criteria which if exceeded would require the implementation of a specific action(s); and

   b) The report refers to use of a 300-foot down-current mixing zone to determine water quality compliance for both acute and chronic criteria. It is true that 300 feet was utilized for the BHNIP (and for other dredging projects) but a final determination on the size and shape of the regulatory mixing zone would be made during the permitting process, in cooperation with the deliberations of the TAC.

   This same comment applies to the other proposals included in this section of the DEIR; but in general, DEP can indicate that these proposals are certainly in-line with prior DEP WQC determinations.

4. (4) The results from the BHNIP, which utilized CAD disposal, showed that the project consistently met the Water Quality Certification compliance standards during the operation, and no long-term impacts have been observed.

C. **Site Permittability**

1. (1) Table 1-3 (pages 1-12) correctly delineates DEP's statutory, regulatory and permitting procedures for the project, the only exception being if a Wetlands Protection Act Superseding Order of Conditions is found to be necessary, which would be issued by DEP.

2. (2) DEP would like to indicate that the Water Quality Certification is the key DEP permitting action for dredging projects, particularly one which includes aquatic disposal. DEP therefore anticipates that, as occurred with the BHNIP, the WQC for this Project will be an extensive and detailed document which will require extensive activities by the project proponent and its contractor(s). As MEPA is aware, as part of the BHNIP, the state regulatory agencies required that

the project proponents retain the services of an "Independent Observer" to monitor and oversee for the regulating agencies daily operations. This procedure was found to be critically important during the BHNIP. DEP respectfully requests that MEPA consider whether a similar activity should be incorporated into this Project.

3. (3) Project Permittability is directly related to the avoidance, minimization and mitigation of impacts associated with the site(s) and operations proposed to be performed. In short, proposals that avoid sensitive biological resources are more permittable than those which directly affect these resources. If impacts to biological resources are unavoidable, then means to minimize these impacts would need to be employed. Finally, if an impact is anticipated to occur, even after minimization measures will be employed, then mitigation is required.

Feel free to contact at (617) 292-5698 if you have any questions regarding this correspondence.

Very truly yours,

Steve G. Lipman, P.E.
Special Projects Coordinator

SGL/wp
6B: 1169DEIR
cc: Deerin Babb-Brott, CZM
New Bedford/Fairhaven Dredged Material Management Committee
Army Corps of Engineers
Massachusetts Division of Marine Fisheries
Massachusetts Department of Environmental Management
USEPA
National Marine Fisheries Service
U.S. Fish and Wildlife Service

10.2 Department of Environmental Protection

Comment: ***A.-*** *Need for additional site-specific information provided in the FEIR at a minimum…*

Response: Additional site-specific information is presented in section 3.0 for the preferred alternatives and 5.0 for the selected preferred alternative.

Comment: A 1. –*(need for) Additional geotechnical borings*

Response: A discussion of the additional information gained from the Phase II geotechnical borings program performed for the FEIR is presented in Section 3.1.

Comment: A 2. *(need for) Macrobenthic sampling and identification*

Response: A discussion of the additional information gained from the macrobenthic sampling and identification program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.6.

Comment: A 3. *– (need for) Current measurements and water column chemistry*

Response: A discussion of the additional information gained from the current measurements program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.9. A discussion of the additional information gained from the water column chemistry program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.8.

Comment: A 4. *– (need for)Dredging and disposal event modeling and hydrodynamic analyses*

Response: A discussion of the additional information gained from the dredging and disposal event modeling program performed for the selected preferred alternative PIN CAD site area is presented in Section 5.0. A discussion of the additional information gained from the hydrodynamic analyses program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.8.

Comment: A 5. –.- *(need for) Underwater archaeological surveys*

Response: A discussion of the additional information gained from the underwater archaeological surveys program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.4.

Comment: A 6. –.-*(need for) Physical and chemical analyses of surficial sediments*

Response: A discussion of the additional information gained from the physical and chemical analyses of surficial sediments program performed for the proposed preferred alternative CI and PIN CAD site areas is presented in Section 3.5.

Comment: A 7. *– the Final EIR will need to include more detailed discussion of Long-Term Management Strategies.*

Response: The FEIR includes a dredging management plan that is presented in Section 8.0. This section describes and provides the framework for the management tools that must be developed to support long-term use of the designated CAD area by individual projects.

Comment: B 1. *–Detailed in-situ measurements of tides, circulation and patterns of sediment resuspension will be evaluated at the preferred disposal site*

Response: Detailed in-situ measurements of tides, circulation and patterns of sediment resuspension were performed as part of the hydrodynamics field program for the FEIR and reported in Section 3.9.

Comment: B 2. *–From prior projects, evidence suggests the impact to water quality from UDM disposal is short-term…*

Response: Detailed CAD cell dredging disposal event modeling and hydrodynamic analyses presented in Section 5.0 presents predictive modeling that further suggests the impact to water quality from UDM disposal is short-term.

Comment: B 3 a. *–…DEP wishes to clarify this statement in that we do not anticipate that project or site-specific "standards" will be developed…*

Response: In the FEIR site-specific information supportive of establishing Water Quality thresholds for dredging and disposal activities of the preferred alternative PIN CAD is presented in Section 3.8.

Comment: B 3 b. *–…a final determination on the size and shape of the regulatory mixing zone would be made during the permitting process, in cooperation with the deliberations of the TAC.*

Response: In the FEIR, information pertaining to the establishment of site-specific mixing zones at the preferred alternative PIN CAD site area has been developed and is presented in Section 3.8. Spatial modeling of disposal events at the preferred alternative PIN CAD have incorporated the water quality WER, presented in Section 3.8 in predictive modeling in Section 5.0. This water quality WER information and modeling will be very helpful to the TYAC and regulatory agencies in the establishment of project specific mixing zones.

Comment: B 4. *– The results from the BHNIP, which utilized CAD disposal , showed that the project consistently met the Water Quality Certification compliance standards during the operation, and no long term impacts have been observed.*

Response: The macrobenthic program presented in Section 3.6, suggests that the benthic community of the preferred alternative is occupied by opportunistic species similar to the BHNIP example. It is expected that no long-term impacts will be observed from dredging and disposal activities at the preferred alternative PIN CAD. The macrobenthic program results presented in Section 3.8 can be used as baseline information for long-term monitoring.

Comment: C 1. *–if Wetlands Protection Act Superseding Order of Conditions is found to be necessary, which would be issued by DE.*

Response: The Dredging Management Plan Section 8.0 presents information that Under the terms of the Record of Decision for the New Bedford Fairhaven Harbor PCB Superfund project, navigation dredging may be undertaken under the state enhanced remedy. If so, the substantive requirements of the state regulatory programs must be met, but the certificate, license or permits themselves would not be issued.

Comment: C 2. *–…the Water Quality Certification is the key DEP permitting action for dredging projects … the WQC for this project will be an extensive and detailed document..*

Response: The FEIR provides a detailed water quality thresholds study in section 3.8, and detailed modeling of disposal events for the preferred alternative PIN CAD site. This information should be very helpful to the TAC, regulators, future project proponents and contractors in developing the WQC.

Comment: C 3. *–In short, proposals that avoid sensitive biological resources are more permittable…*

Response: The FEIR presents information in Section 3.6 that suggests no long-term impacts to benthic infauna from dredging and disposal events at the PIN CAD cell area. Section 7.0 discusses avoidance and minimization of impacts to finfish species and mitigation of impacts to shellfish from dredging and disposal events at the PIN CAD cell area.

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Foster, Dick (ENV)

From: Malkoski, Vincent (FWE)
Sent: Friday, June 14, 2002 8:31 AM
To: Foster, Dick (ENV)
Cc: Babb-Brott, Deerin (ENV)
Subject: EOEA #11669, New Bedford DMMP DEIR

Hi Dick

Thank you for your patience. We agree conceptually with the location of the preferred alternatives - north of Pope's Island and the inner harbor area from the south terminal pier to the vicinity of Coal Packet Pier. Although

A. there will be a loss of shellfish no matter where the material goes, these sites represent the least damaging alternative. Replacement of the lost shellfish through mitigation (propagation) can be dealt with project by project. One of our Shellfish biologists, Dave Whittaker, already works very closely with the City's Shellfish Officer and can assist with development of a good propagation plan.

B. The remaining issues that need to be worked out are more of an operational nature. As these cells are designed for multiple disposal events, we need to define the schedule for their use to minimize impacts from resuspension of dredged material. Best management practices for dredging and confinement of dredging to traditional time-of-year windows should help to address these issues.

Vin

Vin Malkoski
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10.3 Department of Marine Fisheries

Comment: ***A.-*** *…there will be a loss of shellfish no matter where the material goes. Replacement of the lost shellfish can be dealt with through mitigation.*

Response: The DMF shellfish biologist assigned to New Bedford/Fairhaven Harbor has suggested mitigation for shellfish as a condition of future dredging and disposal events at the PIN CAD cell area. A discussion of shellfish mitigation measures for dredging and disposal events at the PIN CAD cell area is presented in Section 7.0.

Comment: ***B.*** *–We need to define the schedule for their use(PIN CAD)…*

Response: Biological time-of-year dredging windows are presented as information and recommendation in Section 7.0 of the FEIR. These dredging windows are protective of fish species in various life stages. The dredging windows information presented in the FEIR is intended to provide a tool for regulators to consider for specific dredging projects. This dredging windows tool is adjustable.